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Supreme Court of the United States

OCTOBER TERM 1980

79-1969

ACKERLEY COMMUNICATIONS, INC., and
MARONCO, INC.,

Appellants,

v.

CITY OF SEATTLE and ALFRED PETTY,

Respondents.

JURISDICTIONAL STATEMENT

ROBERT W. GRAHAM of
BOGLE & GATES

Counsel for
Appellants

Of Counsel:
RONALD T. SCHAPS

Office and PO Address:
The Bank of California Center
Seattle, Washington 98164

Telephone:
(206) 682-5151

ABCD AT CRAFTSMAN PRESS, SEATTLE

SUBJECT INDEX

	Page
Jurisdictional Statement.	1
Opinion Below	2
Jurisdiction.	3
Questions Presented	5
Statement	6
Statutes Involved	10
Argument.	10
1. The Washington Court's Interpretation That Outdoor Advertising Signs Within Commercial and Industrial Areas Are Not Within the Compensation Requirements of 23 U.S.C. § 131 Is Clearly Erroneous	10
2. The Washington Supreme Court's Holding That the City of Seattle's Ordinance Does Not Infringe on Rights of Freedom of Speech and Press Protected by the First Amendment, Is Clearly Improper. . .	19
3. Appellant Has Been Denied Due Process of Law.	26
Conclusion.	26
Appendix A.	A-1
Ackerley Communications, Inc. v. City of Seattle, 92 Wn.2d 905, 602 P.2d 905 (1979)	A-1
Mandate	A-24

Page

Order Denying Motion for Reconsideration A-26

Judgment for Mandate of Supreme Court . . A-27

Motion for Summary Judgment A-30

Summary Judgment. A-32

Notice of Appeal to the Supreme Court of the United States. A-43

Letter from Edward V. A. Kussy, Deputy Assistant Chief Counsel, U.S. Department of Transportation, to Mr. Eric M. Rubin A-45

First Amendment to the United States Constitution. A-50

Fourteenth Amendment to the United States Constitution A-50

23 U.S.C. § 131 . . . . . A-50

1975 Amendment to 23 U.S.C. § 131(g). . . A-53

1978 Amendment to 23 U.S.C. § 131(c), (g), and (k). A-53

Highway Advertising Control Act - Scenic Vistas Act, RCW 47.42. . . . . A-55

Seattle City Ordinance 97025. . . . . A-58

TABLES OF AUTHORITY

Table of Cases

Armstrong v. Manzo, 380 U.S. 545 (1965) . . . 26

Page

Baldwin v. Redwood City, 540 F.2d 1360 (9th Cir. 1976) 20

Cohen v. California, 403 U.S. 15 (1971) . . . 20

Donnelly Advertising Corp. v. City of Baltimore, 370 A.2d 1127 (Md. 1977) 13

Erznoznik v. Jacksonville, 422 U.S. 205 (1975). 20

Goldberg v. Kelly, 397 U.S. 254 (1970). . . . 26

Grannis v. Ordean, 234 U.S. 385 (1914). . . . 26

Hague v. CIO, 307 U.S. 496 (1939) 20

Linmark Associates, Inc. v. Township of Willingboro, 431 U.S. 85 (1977). .20,21-22,24

Louisville & Nashville R.R. v. Schmidt, 177 U.S. 230 (1900) 26

Markham Advertising Co. v. State, 73 Wn.2d 405, 439 P.2d 248 (1968), app. dism'd, 393 U.S. 316, rehearing denied, 393 U.S. 1112 (1969). 21,24

Metromedia, Inc. v. San Diego, 23 Cal. 3d 762, 592 P.2d 728, 154 Cal. Rptr. 212 (1979). 7

Metromedia, Inc. v. San Diego, 26 Cal. 3d 848, __ P.2d __, __ Cal. Rptr. ___ (1980). 7,17,18

Modjeska Sign Studios, Inc. v. Berle, 43 N.Y.2d 468, 402 N.Y.S.2d 359, 373 N.E.2d 255 (1977), app. dism'd, 439 U.S. 809 (1978) 7,13

Page

Mullane v. Central Hanover Tr. Co., 339 U.S. 306 (1950) 26

NAACP v. Button, 371 U.S. 415 (1963). 19

Near v. Minnesota, 283 U.S. 697 (1931). . . . 19

Perry v. Sindermann, 408 U.S. 593 (1972). . . 26

Schneider v. Irvington, 308 U.S. 147 (1939). 20

Sherbert v. Verner, 374 U.S. 398 (1963) . . . 20

Shuttlesworth v. Birmingham, 394 U.S. 147 (1969). 20

Spence v. Washington, 418 U.S. 405 (1974) . . 20

State v. Lotze, 92 Wn.2d 52, 593 P.2d 81 (1979). 24

Valentine v. Chrestensen, 316 U.S. 52 (1942). 21

Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976). 20

Constitutional Provisions

First Amendment, United States Constitution. . . . . .3,5,6,8,10,20, et seq.

Fourteenth Amendment, United States Constituton 3,8,10,

Page

Statutes

23 U.S.C. § 131 . . . . 2,3-4,5,6,, et seq.

23 U.S.C. § 131(c). 11-12, 15

23 U.S.C. 131(d). 4-12,15

23 U.S.C. § 131(g). 13,14

23 U.S.C. § 131(k). 13,14

23 U.S.C. § 1257(2) 5

RCW 47.42 10

RCW 47.42.107 4

Ordinance

Seattle City Ordinance 97025. 10

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1980

ACKERLEY COMMUNICATIONS, INC., and
MARONCO, INC.,

Appellants,

v.

CITY OF SEATTLE and ALFRED PETTY,

Respondents.

JURISDICTIONAL STATEMENT

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Appellant, ACKERLEY COMMUNICATIONS, INC.,[1] appeals from a decision of the Supreme Court of the

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[1] Appellant, MARONCO, INC., a property owner leasing a site to Ackerley Communications, Inc. for an outdoor advertising sign, joins in the appeal by Ackerley Communications, Inc. and adopts this Jurisdictional Statement. Further discussion shall proceed in terms of appellant Ackerley Communications.

State of Washington, entered on November 21, 1979: misinterpreting and misapplying 23 U.S.C. § 131 contrary to the clear language of the statute, congressional history and the opinions of the federal agency charged with its enforcement; holding that an ordinance of the City of Seattle does not violate appellant's rights of freedom of speech and of the press; and deciding the constitutional issues without a factual record and pursuant to procedures whereby appellant was deprived of any opportunity to present factual evidence on the constitutional issues or contest the City's unsupported factual arguments. Appellant submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINION BELOW

The opinion of the Supreme Court of the State of Washington, entered on November 21, 1979, is reported at 92 Wn.2d 905, 602 P.2d 1177 (1979). A copy of that opinion is attached hereto in the Appendix. A motion for rehearing was denied on February 14, 1980, and a judgment on the mandate was entered by the Superior Court of the State of Washington for King County on April 7, 1980. Copies of the order, mandate and judgment are attached hereto in the Appendix.

JURISDICTION

Appellant is, and has been for some years, legally engaged in the outdoor advertising business in the City of Seattle. This suit was brought by appellant[2] to challenge an ordinance of the City of Seattle which required appellant to remove, without compensation, outdoor advertising signs. These signs are located in industrial and commercial zones and within 660 feet of federal-aid primary and interstate highways. Appellant challenged the ordinance as violating rights of freedom of speech, press and expression protected by the First and Fourteenth Amendments to the Constitution of the United States. Appellant also challenged the ordinance as inconsistent with 23

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[2] The suit was actually commenced by a predecessor corporation but Ackerley Communications, Inc. was substituted by court order in 1976 and thereafter continued the prosecution of the suit.

U.S.C. § 131 because of its failure to provide for compensation.[3]

The trial court in 1977, pursuant to a motion for summary judgment limited to the application of a single state law provision (RCW 47.42.107), entered judgment declaring the removal provisions of the ordinance to be invalid. None of the constitutional issues raised by appellant's suit were tendered to the trial court; no factual record as to such issues existed before the trial court; and appellant had no opportunity before the trial court to present factual evidence on such issues. The trial court expressly held that those issues had become moot by virtue of the entry of the summary judgment. The motion and the summary judgment are reproduced in the Appendix.

On appeal, the Washington Supreme Court reversed, based upon a clearly erroneous interpretation of 23 U.S.C. § 131. The Washington Supreme Court also then proceeded to decide all of the constitutional issues raised adversely to appellant

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[3] The ordinance was also inconsistent with a federal/state agreement entered into pursuant to 23 U.S.C. § 131(d) and state laws passed to assure compliance with 23 U.S.C. § 131. Any state law consequences which might flow from a proper interpretation of 23 U.S.C. § 131 will of course be determined by the state court on remand. State law consequences are dependent on the interpretation of the federal statute. It is conceded that the public policy and law of the State of Washington is to comply with the provisions of 23 U.S.C. § 131.

without any factual record and over appellant's objections that it was being deprived of any opportunity to present a factual record in support of its constitutional challenges. A motion for reconsideration was denied by the Washington Supreme Court on February 14, 1980. A judgment determining all such issues adversely to appellant was entered by the trial court on April 7, 1980, based upon the Washington Supreme Court's mandate and without further evidence. Notice of appeal was timely filed in the Washington Supreme Court on May 1, 1980. The notice of appeal is reproduced in the Appendix. The jurisdiction of the United States Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. § 1257(2).

QUESTIONS PRESENTED

1. Does the Highway Beautification Act of 1965, as amended (23 U.S.C. § 131) require compensation to be paid upon the removal of lawfully erected outdoor advertising signs located within industrial and commercial areas and located within 660 feet of, and visible from, federal-aid primary and interstate highways?

2. Has the City of Seattle adequately and constitutionally justified its restraints on First Amendment rights or is the Washington Supreme Court's holding improper and unsupportable?

Conversely, have appellant's First Amendment rights of freedom of speech and freedom of the press been violated?

3. Was appellant deprived of due process of law when the Washington Supreme Court decided the constitutional issues, and particularly the First Amendment issues, without any factual record before it and in a manner which deprived appellant of any opportunity to present a factual record in support of its contentions on those constitutional issues?

STATEMENT

This appeal involves the interpretation of a federal statute where the highest courts of two states, California and Washington, have reached opposing conclusions in contemporaneous decisions. The Washington Supreme Court concluded that outdoor advertising signs located in commercial or industrial areas within 660 feet of federal and primary or interstate highways, unlike all other outdoor advertising signs visible to such highways, were not entitled to compensation upon removal under 23 U.S.C. § 131.

The opinion of the Washington Supreme Court ignores: the clear, literal language of the statute; the explicit congressional history of the 1978 amendments to that statute; and the contrary

opinions of the federal agency charged with enforcement of the statute, including a formal opinion issued in response to the Washington Supreme Court's decision and submitted to that court in connection with the motion for reconsideration.

The Washington Supreme Court purported to rely on two authorities to support its interpretation -- the pre-1978 amendment decision of Modjeska Sign Studios, Inc. v. Berle, 43 N.Y.2d 468, 402 N.Y.S. 2d 359, 373 N.E.2d 255 (1977), app. dismissed, 439 U.S. 809 (1978), a decision which Congress considered erroneous, intended to correct by the 1978 clarifying amendments[4] and which is identified by name in the Congressional history; and a vacated California Supreme Court decision, Metromedia, Inc. v. San Diego, 23 Cal. 3d 762, 592 P.2d 728, 154 Cal. Rptr. 212 (1979). These facts were also brought to the Washington Supreme Court's attention, but ignored. The California Supreme Court in its subsequent opinion in Metromedia, Inc. v. San Diego, 26 Cal. 3d 848, ___ P.2d ___, ___ Cal. Rptr. ___ (1980) explicitedly repudiated the

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[4] The State of New York abandoned its attempts to remove such signs without compensation following the 1978 amendments to 23 U.S.C. § 131, a fact brought to the Washington Supreme Court's attention.

Washington Supreme Court's analysis and interpretation.

This appeal also involves the Washington Supreme Court's determination - as an initial determination on appeal, without any factual record and in a manner which necessarily precluded appellant from making any factual showing in support of its challenge -- that the City's ordinance did not improperly impinge on freedom of speech and press rights protected by the First and Fourteenth Amendments to the Constitution of the United States.

Appellant, as previously noted, is engaged in the outdoor advertising business and provides a unique advertising media to all segments of the public. While it obviously carries messages advertising commercial products and services, it also provides an extensive media for public service, religious, political and other non-commercial messages. The media's low cost and high effectiveness characteristics make it particularly socially valuable; it provides a means for individuals or groups without extensive finances, or without year round organizations capable of mobilizing thousands of volunteers for door-to-door campaigning, to effectively participate in elections, both for public office and on public issues. Its social value is especially critical in a state like Washington which relies very heavily on initiatives, referendums, bond issues, and other public

issue elections at all levels of state and local government, and which encourages non-partisan offices and the candidacy of independents and members of smaller political parties.

The City of Seattle made no attempt to introduce any factual evidence to justify the restraints of the ordinance. There is no evidence concerning: the ordinance's relationship to any compelling state interest; the necessity or reasonableness of the restraints; the unavailability of more limited restraints; the availability or adequacy of alternative channels of communication; or the impact of the ordinance upon the viability of the media and the societal consequences of the loss of such a media. Appellant was, and is, prepared to factually support the challenge to the ordinance on each of the above factors, but has been denied any opportunity to do so. In this regard, appellant was, and is, prepared to make such a factual showing both in terms of the ordinance itself and the application of the ordinance as a part of a common scheme of ordinances to eliminate outdoor advertising as a viable media of communications. The Washington Supreme Court ruled, without a record, that the ordinance was a valid restraint on appellant's "purely commercial speech".

Appellant acknowledges that the Washington Supreme Court also found that appellant had failed to exhaust its administrative remedies, which could

have provided an independent grounds for terminating this action without prejudice, leaving the litigation of the constitutional and statutory issues to subsequent litigation. The majority of the court, however, declined to dispose of this case on that basis and proceeded to dispose of the case on the substantive issues. Appellant, therefore, had no choice but to take this appeal.

STATUTES INVOLVED

First Amendment and Fourteenth Amendment, United States Constitution; 23 U.S.C. § 131; RCW 47.42; Seattle City Ordinance 97025. Texts of relevant portions of the foregoing are reproduced in the Appendix.

ARGUMENT

1. The Washington Court's Interpretation That Outdoor Advertising Signs Within Commercial and Industrial Areas Are Not Within the Compensation Requirements of 23 U.S.C. § 131 Is Clearly Erroneous

Congress has passed the Highway Beautification Act of 1965, as amended, 23 U.S.C. § 131. As a condition of receiving its full share of federal highway funds, each state is required to maintain "effective control" of outdoor advertising signs

along federal-aid primary and interstate highways, including an express requirement to pay just compensation upon the removal of such outdoor advertising signs as were lawfully erected.

The starting point for analysis is 23 U.S.C. § 131(c), as amended, which provides:

> (c) Effective control means that such signs, displays, or devices . . . visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall, pursuant to this section, be limited to (1) directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, (3) signs, displays and devices, including those which may be changed at reasonable intervals by electronic process or by remote control, advertising activities conducted on the property on which they are located, (4) signs lawfully in existence on October 22, 1965, determined by the State, subject to the approval of the Secretary, to be landmark signs, including signs on farm structures or natural surfaces, of history or artistic significance

> the preservation of which would be consistent with the purposes of this section, and (5) signs, displays, and devices advertising the distribution of non-profit organizations of free coffee to individuals traveling on the Interstate System or the primary system. For the purposes of this subsection, the term "free coffee" shall include coffee for which a donation may be made, but is not required. [Emphasis supplied.]

It is immediately obvious that no outdoor advertising signs, even in industrial or commercial zones, are permitted by Section 131(c). The only signs permitted by Section 131(c) are: (1) directional and official; (2) real estate; (3) on-premise; (4) landmark; and (5) free coffee.

Pursuant to 23 U.S.C. § 131(d), however, Congress also authorized the Secretary of Transportation, by agreement, to provide a limited exemption from Section 131(c) so as to permit outdoor advertising signs to be erected and maintained in industrial and commercial zones. The limited exemption authorized by Section 131(d) is restricted: (1) to those signs falling within the federal-state agreement; and (2) to those signs

within the agreement which are permitted to remain.[5]

A number of local authorities sought to compel the removal of billboards in industrial and commercial areas, relying on an unsupportable analysis comparable to that put forth in the majority opinion -- and it was precisely to eliminate such improper analysis that the Surface Transportation Act of 1978 amendments to § 131(g) and (k) were passed (P.L. 95-579, November 6, 1978, § 122(a) and (b); amending 23 U.S.C. § 131(g) and (k)).

The Secretary of Transportation, in his official comments on the proposed amendments, clearly acknowledged that their intent and effect would be to reverse the result in cases like Donnelly Advertising Corp. v. City of Baltimore, 370 A.2d 1127 (Md. 1977) and Modjeska Sign Studio, Inc. v. Berle, 43 N.Y.2d 468, 402 N.Y.S. 2d 359, 373 N.E.2d 255 (1977) and place such states

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[5] Contrary to the Washington Supreme Court's statement, the federal/state agreement explicitly involved "grandfathering" of existing outdoor advertising signs located in commercial and industrial areas and within 660 feet of an interstate or federal-aid primary highways. This fact is also specifically pointed out by the opinion of the federal agency involved, which opinion is discussed later in this text.

in immediate noncompliance unless they paid compensation (Cong. Rec. p. E 4893 (Sept. 8, 1978)).

The language of the amendments clearly spells out this result. Section 131(g) was amended to read:

> (g) Just compensation shall be paid upon the removal of any outdoor advertising sign, display, or device lawfully erected under State law and not permitted under subsection (c) of this section, whether or not removed pursuant to or because of this section. [Language added by amendment underlined.]

The only exception to the requirement to pay just compensation relates to the five categories of signs permitted by § 131(c) -- directional and official; real estate; on-premise; landmark; and free coffee. Furthermore, the additional language "whether or not removed pursuant to or because of this section" precludes any argument that compensation is restricted to billboards where removal would be mandatory under § 131.

Section 131(k) was amended to read:

> (k) Subject to compliance with subsection (g) of this section for the payment of just compensation, nothing in this section shall prohibit a State from establishing standards imposing stricter limitations . . . [Amendatory language underlined.]

To attempt to improperly restrict the obligation to pay compensation to billboards whose removal is mandatory under § 131, is an attempt to render this amendatory language a nullity.

This analysis is emphasized by House Report No. 95-1485, in which, after setting forth the same analysis that § 131(c) permits only the specific categories listed in that section -- not including billboards which are subject to an option whether to implement the exemption under § 131(d) to either permit them to remain or pay for them (95th Cong., 2d Sess., 1978 USCAAN at 6591-92) -- the Report goes on to state:

> If the exemption is exercised, signs which are consistent with customary use of size, lighting, and spacing may be erected and maintained in industrial and commercial areas, eliminating any removal of such signs for which just compensation must be paid. On the other hand, any signs in such industrial and commercial areas which are not consistent with customary use of size, lighting, and spacing are not eligible for the exemption from conformance with the "effective control" requirements of subsection (c) and subsection (g) of section 131 requires payments of just compensation for their removal.
>
> If a State or local government does not exercise the exemption in subsection (d) to permit signs that are consistent with

> customary use of size, lighting, and spacing to be erected and maintained, then there is no distinction between signs in industrial and commercial areas. Except for the four classes of signs permitted by subsection (c), all of the signs are nonconforming with the "effective control" requirement of subsection (c), and the committee is of the opinion that subsection (g) requires payment of just compensation for their removal. It would be grossly inequitable to pay compensation for removal of signs in industrial and commercial areas which are not consistent with customary use of size, lighting, and spacing, but not pay for the removal of signs in such areas which would be consistent with such customary use except for the failure of the State or local government to exercise the exemption permitted by subsection (d).
>
> Subsections (a) and (b) of section 116 would clarify existing law by clearly setting forth that just compensation must be paid upon the removal of any lawfully erected sign which is not permitted under subsection (c) of section 131, title 23, United States Code.

(98th Cong., 2d Sess., 1978, USCAAN at 6591-92.)

This analysis was explicitly confirmed in an opinion from the U.S. Department of Transportation, Federal Highway Administration ("FHWA") -- the agency charged with the enforcement of 23 U.S.C. 131. This opinion was issued in response to the Washington Supreme Court opinion and submitted to that court on the motion for reconsideration. This

opinion is reproduced in the Appendix. While this FHWA opinion was specifically directed to the Washington situation, it was not a newly expressed opinion as to the proper interpretation of the statute. That opinion reiterated, perhaps in some greater detail to assist the Washington Supreme Court, the same interpretation previously expressed in opinions to the states of Oregon and Maine and in directives to the FHWA regional offices -- which opinions and directives were also before the Washington Supreme Court -- and officially published in the Federal Register. (Vol. 44, No. 123, June 25, 1979 at p. 37100.)

The Washington Supreme Court, however, continues to adhere to its holding that 23 U.S.C. § 131 does not apply to signs within commercial and industrial zones and therefore no compensation is required (92 Wn.2d 905 at 915-17), relying upon: a pre-1978 amendment decision Congress considered erroneous and nullified by the 1978 amendments; a vacated California Supreme Court decision; and an analysis that defies logic or rationale when compared with the actual language of the statute, Congressional reports, memoranda and agreement referred to by the majority opinion.

The California Supreme Court, upon reconsideration of Metromedia, Inc. v. San Diego, 26 Cal. 3d 848, ___ P.2d ___, ___ Cal. Rptr. ___ (1980), considered exactly the same issue with respect to

the federal statute and reached a diametrically opposed conclusion, determining that the federal statute does require compensation. In so doing, the court specifically repudiated the analysis of the Washington Supreme Court.

> We have carefully considered the decision of the Washington Supreme Court in Ackerley Communications, Inc. v. City of Seattle, supra, 602 P.2d 1177. Denying compensation for removal of signs within commercial and industrial zones, Ackerley stated that "[s]ince signs within commercial and industrial zones which are not governed by an agreement between the State and the Department of Transportation are not regulated by, and are wholly outside the scope of, the federal statute, the only reasonable interpretation of the statutory language is that it does not require compensation for such signs." (602 P.2d at 1184.) We must respectfully disagree with the analysis of Ackerley. In our opinion, the federal statute does regulate signs within commercial and industrial zones which are not governed by a federal-state agreement -- specifically, the act prohibits such signs unless they fall within the five exempt categories of subsection (c). Consequently, it requires compensation when those signs are removed.

Metromedia, Inc. v. San Diego, supra, at 877.

This irreconcilable conflict between two state supreme courts concerning the interpretation of

this federal statute has broad implications which will disrupt the orderly implementation of the Act in every state and city in the United States. Those who seek to evade the obligations of just compensation will seek to rely upon the erroneous and unsupportable interpretation of the Washington Supreme Court. States desiring to assure compliance with the federal law and owners of outdoor advertising signs, however, will assert the logical interpretation of the California Supreme Court and the FHWA. The resulting litigation will be substantial. The only reasonable solution is for this Court to resolve the conflict.

2. The Washington Supreme Court's Holding That the City of Seattle's Ordinance Does Not Infringe on Rights of Freedom of Speech and Press Protected by the First Amendment, Is Clearly Improper

First Amendment rights occupy a preferred position, and cannot be infringed unless exceptional circumstances exist. See e.g., Near v. Minnesota, 283 U.S. 697 (1931); NAACP v. Button, 371 U.S. 415 (1963). The usual presumption of validity does not exist and, indeed, the presumption is against the legislative act. Even with time, place and manner regulations the burden of establishing that the ordinance is justified by a

compelling governmental interest, that the restrictions are drawn as narrowly as possible, and that acceptable alternative channels of communication are available, must be met by the municipality. Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976); Linmark Associates, Inc. v. Township of Willingboro, 431 U.S. 85 (1977). Finally, the City must establish that the regulation intrudes in the least possible degree in order to accomplish the necessary purpose. See Sherbert v. Verner, 374 U.S. 398 (1963).

Urban streets and roads are a traditional and proper public forum, access to which is protected by the First Amendment. Schneider v. Irvington, 308 U.S. 147, 163 (1939); Hague v. CIO, 307 U.S. 496 (1939); Shuttlesworth v. Birmingham, 394 U.S. 147 (1969); Baldwin v. Redwood City, 540 F.2d 1360 (9th Cir. 1976), cited with approval in Linmark Associates, Inc. v. Willingboro, 431 U.S. 85, 94 (fn. 7) (1977). That some may wish to avoid such visual communication is no basis for restricting the communication, as they may simply avert their eyes. Erznoznik v. Jacksonville, 422 U.S. 205 (1975); Spence v. Washington, 418 U.S. 405 (1974); Cohen v. California, 403 U.S. 15 (1971).

In the past, state courts have denied "commercial" speech any First Amendment protections,

relying on casual language in Valentine v. Chrestensen, 316 U.S. 52 (1942). See e.g., Markham Advertising Co. v. State, 73 Wn.2d 405, 439 P.2d 248 (1968), app. dismissed, 393 U.S. 316, rehearing denied, 393 U.S. 1112 (1969). This Court, however, has eliminated that so-called "exception" to First Amendment protections. As this Court stated in Linmark Associates, Inc. v. Willingboro, 431 U.S. 85 at 91 (1977):

> The starting point for analysis of petitioners' First Amendment claim must be the two recent decisions in which this court has eroded the "commercial speech" exception to the First Amendment. In Bigelow v. Virginia, 421 U.S. 809, 44 L. Ed 2d 600, 95 S.Ct. 2222 (1975), decided less than two years ago, this Court for the first time expressed its dissatisfaction with the then-prevalent approach of resolving a class of First Amendment claims simply by categorizing the speech as "commercial." Id. at 826, 44 L.Ed 2d 600, 95 S.Ct. 2222. "Regardless of the particular label," we stated, "a court may not escape the task of assessing the First Amendment interest at stake and weighing it against the public interest allegedly served by the regulation." Ibid. . . .
>
> One year later, in Virginia Pharmacy Bd. v. Virginia Citizens Consumer Council, 425 U.S. 748, 48 L.Ed 2d 346, 96 S.Ct. 1817 (1976), we went further. Conceding that "[s]ome fragment of hope for the continuing validity of a 'commercial speech' exception arguably might have persisted because of the subject matter of the advertisement in Bigelow," id., at 760, 48 L.Ed

> 2d 346, 96 S.Ct. 1817, we held quite simply, that commercial speech is not "wholly ouside the protection of the First Amendment," id., at 761, 48 L. Ed 2d 346, 96 S. Ct. 1817. Although recognizing that "[s]ome forms of commercial speech regulation" -- such as regulation of false or misleading speech -- 'are surely permissible,' . . ."

Appellant recognizes that this Court has indicated that "commercial" speech may still be subjected to reasonable time, place and manner restrictions provided that the state or municipality carries the affirmative burden of showing (1) a compelling state interest, (2) a necessary connection with regulations drawn as narrowly as possible, and (3) that there are ample alternative channels of communication. Appellant also recognizes that this Court has indicated that some "commercial" speech may be subject to stricter regulation than would be permitted for other forms of speech. This Court has not, however, allowed restrictions to be imposed without such affirmative factual justification, or approved state courts reverting to the disposition of First Amendment issues on the basis of theoretical assumptions, presumptions or labeling the speech as "purely commercial."

The Washington Supreme Court did not, and could not, assess the First Amendment interests at stake, weigh them against the public interest, examine the precision with which the regulations are drawn to assure that they are no broader than

are drawn to assure that they are no broader than necessary, or evaluate in a realistic and practical manner the adequacy and reasonableness of alternate channels of communication it may have assumed were theoretically available. The City of Seattle made no attempt to factually justify its ordinance, and appellant was denied any opportunity to present a factual record -- both as to the ordinance itself and as applied as part of a common scheme to eliminate outdoor advertising as a viable media of communication. The Washington Supreme Court had no factual record before it on which to properly resolve the First Amendment issues.

The Washington Supreme Court purports to resolve the issue of compelling public interest and its relationship to the ordinance by asserting that appellant points to no evidence to support its claim (92 Wn.2d at 920). In fact, however, by deciding the issue initially on appeal it was depriving appellant specifically of the opportunity to present such evidence. There certainly was no affirmative evidence from the City to support the ordinance -- indeed the only evidence before the court at all on this matter was answers to interrogatories where the City admitted it knew of no instance where any outdoor advertising sign was considered the cause, or even a contributing cause, of any accident.

The Washington Supreme Court purports to rule as a matter of law, relying on two of its own prior decisions. In Markham Advertising Co.v. State, supra, the court resolved the issues based upon presumptions of constitutionality; an extensive record relating to safety considerations limited to high speed interstate highways; and summary disposition of the First Amendment claims based solely on a classification of "commercial" speech as being without First Amendment protection and with no balancing of interests or consideration of alternate channels. State v. Lotze, 92 Wn.2d 52, 593 P.2d 811 (1979), also involved high speed highways, where a traffic safety rationale was conceded and the only alternate channels of communication identified by the court were outdoor advertising signs permitted in commercial and industrial zones - the very channel of communication now involved in this litigation.

The Washington Supreme Court, in asserting that "ample alternate channels of communication" are available, identifies none and makes no evaluation of their sufficiency. As this court clearly held in Linmark Associates, Inc. v. Willingboro, supra at 93, reliance on theoretical alternate channels of communication, or assumptions that they exist, does not provide a proper basis for resolving First Amendment issues -- the City must establish, and the Court must evalute, the realistic

practicality of alleged alternate channels, their cost, their effectiveness and their realistic availability.

Striking at outdoor advertising's use as an effective instrument of public speech may significantly deprive members of the public of access to a low cost, high-reception communications media. The discriminatory outlawing of a comparatively inexpensive medium favors the wealthy. Judge Kaufman of the U.S. Court of Appeals for the Second Circuit has stated:

> Some members of our society have plentiful access to radio, television, newspapers and other means of mass communications to convey their messages; others have almost none.
>
> * * *
>
> Because of the difficulty in preventing discrimination -- intentional or unintentional -- even where the medium has been found to cause sufficient harm to warrant its regulation, the restraint must be as narrow as possible and consistent with its purpose. [Kaufman, The Medium, the Message and The First Amendment, 45 N.Y.U.L. Rev. 761 at 773 (1970)]

It is properly the City of Seattle's burden to establish the adequacy of alternate channels of communication. Even aside from that burden, it is certainly improper to prevent appellant from establishing a factual record to show that the ordinance will have substantial adverse impacts and that asserted alternate channels of communication are not realistically adequate.

3. Appellant Has Been Denied Due Process of Law

The Washington Supreme Court, in reaching its decision on the constitutional issues, denied appellant an opportunity to present evidence in support of its claims. The fundamental requisite of due process of law is the opportunity to be heard, Grannis v. Ordean, 234 U.S. 385, 395 (1914). Furthermore, ". . . the right to a hearing embraces an adequate opportunity . . . to defend . . ." Louisville & Nashville R.R. Co. v. Schmidt, 177 U.S. 230, 236 (1900).

In essence, what the Constitution requires is "an opportunity . . . granted at a meaningful time and in a meaningful manner," Armstrong v. Manzo, 380 U.S. 545, 552 (1965), "for a hearing appropriate to the nature of the case," Mullane v. Central Hanover Tr. Co., 339 U.S. 306, 313 (1950). This includes the opportunity to present evidence and to confront and meet opposing evidence. Golderg v. Kelly, 397 U.S. 254 (1970); Perry v. Sindermann, 408 U.S. 593 (1972). Appellant has been denied these rights.

CONCLUSION

On the basis of the foregoing, appellant prays that this Honorable Court note probable jurisdiction of this case and that the decision of

the Washington Supreme Court be reversed. Appellant requests that this Court hold that 23 U.S.C. § 131 provides for compensation for these signs and that this case be remanded for trial on the constitutional issues.

Respectfully submitted,

ROBERT W. GRAHAM of
BOGLE & GATES
The Bank of California Center
Seattle, Washington 98164
Telephone: (206) 682-5151
Counsel for Appellants

Of Counsel:
RONALD T. SCHAPS

June 16, 1980

APPENDIX A

Nov. 1979 ACKERLEY COMMUNICATIONS V. SEATTLE

92 Wn.2d 905

[No. 45281. En Banc. November 21, 1979.]

ACKERLEY COMMUNICATIONS, INC., ET AL, Respondents,

v.

THE CITY OF SEATTLE, ET AL, Appellants.

DIAMOND PARKING, INC., Respondent,

v.

THE CITY OF SEATTLE, ET AL, Appellants.

[1] Zoning - Affirmative Relief - Exhaustion of Administrative Remedies - Necessity. Prior to commencing an action for declaratory or injunctive relief from an allegedly unconstitutional zoning ordinance, a person must exhaust all available administrative remedies which could obviate any injury suffered by him under the ordinance.

[2] Appeal and Error -- Decisions Reviewable - Moot Questions - In General. A court may dispose of the substantive issues of an otherwise moot controversy if such issues were adequately briefed and argued and involve matters of substantial public interest, particularly where their final determination is essential in guiding the conduct of public officials.

[3] Highways - Outdoor Advertising - Regulation - Preemption. The federal and state statues (23 U.S.C. § 131, RCW 47.42) restricting the

location of signs along highways do not preempt the right of local governments to further regulate outdoor advertising.

[4] Highways - Outdoor Advertising - Regulation - Removal - Compensation. The federal statute restricting outdoor advertising adjacent to federally aided highways (23 U.S.C. § 131) does not require compensation for the removal of signs located in urban commercial and industrial zones except as agreed to by a state and the federal Department of Transportation.

[5] Municipal Corporations - Gifts - Constitutional Prohibition - In General. Const. art. 8, § 5 prohibits a municipality from spending public funds when it neither expects nor receives consideration in return, even if such expenditure is made to achieve a laudable public purpose.

[6] Highways - Outdoor Advertising - Regulation - Removal - Compensation. RCW 47.42.107, which requires just compensation to be paid upon the removal of signs pursuant to local government authority, may not constitutionally be applied to signs which were subject to immediate removal without compensation on the date such statute took effect.

[7] Highways - Outdoor Advertising - Regulation - Police Power. A local ordinance regulating outdoor advertising signs for the express purpose of protecting public safety and promoting aesthetic values is a legitimate exercise of police power and does not effect an unconstitutional taking of property without compensation.

[8] Highways - Outdoor Advertising - Regulation - Equal Protection. An owner of an outdoor

advertising sign subject to removal without compensation under a municipal ordinance is not denied equal protection of the laws merely because owners of other signs in different locations are compensated for the removal of their signs under federal and state statutes.

[9] Highways - Outdoor Advertising - Regulation - Freedom of Speech. Reasonable regulation of outdoor signs adjacent to highways for the purpose of traffic safety does not violate the First Amendment free speech guaranty.

Wright, Brachtenbach, Rosellini and Stafford, JJ., dissent in part by separate opinions.

Nature of Action: Billboard owners sought a declaratory judgment and injunctive relief from a municipal ordinance which required the removal of their billboards without compensation.

Superior Court: Consolidating separate actions, the Superior Court for King County, Nos. 786238, 800825, W.R. Cole, J., on November 30, 1977, granted summary judgment in favor of the billboard owners.

Supreme Court: Holding that the billboard owners lacked standing to bring their action, that federal and state statutes requiring compensation for the removal of signs did not apply to the billboards in question, and that the ordinance was constitutional, the court reverses the summary judgment.

Douglas N. Jewett, City Attorney, and Charles D. Brown, Assistant, for appellants.

Bogle & Gates, Ronald T. Schaps, Lycette Diamond & Sylvester, and Lyle L. Iversen, for respondents.

Lee Kraft on behalf of City of Bellevue and George M. Mack, amici curiae.

HOROWITZ, J. - This appeal in consolidated actions for a declaratory judgment and injunctive relief raises the question whether Seattle ordinance No. 90138 as amended by ordinance No. 97025 (the Ordinance) is valid as applied to respondent billboard owners. We hold that it is, and therefore reverse.

The Seattle ordinance, enacted in 1968, is a part of the coordinated efforts of federal, state and local governments to preserve the natural beauty of our nation's scenic vistas and to protect the public health and safety on the highways by means of regulating the placement, size, et cetera of outdoor advertising signs and billboards (signs) along the highways. The Ordinance regulates those signs which are within 660 feet of, and visible from, designated scenic or landscaped sections of highway within the city. It requires removal of certain of these signs which do not meet the Ordinance's specifications after a 3-year amortization period. The City's Board of Adjustment may grant extensions of the amortization period for an additional period up to 7 years under the provisions of the Ordinance. It may also grant variances which would allow the maintenance of signs which otherwise do not conform to all the Ordinance's regulations. The Ordinance does not provide for compensation to the owners of signs which are removed pursuant to its terms.

Respondents in this action, Ackerley Communications, Inc., Maronco, Inc., and Diamond Parking, Inc. (or their predecessors in interest), were all notified by the City in 1974 or 1975 that their signs were in violation of the Ordinance and would have to be brought into compliance or removed. Respondents then sought (1) declaratory judgments that the Ordinance was in conflict with state law and unconstitutional, and (2) orders restraining

the City from enforcing it, in the Superior Court for King County. The actions were consolidated in 1976. Various continuances postponed trial of the matter until 1977, when respondents moved for summary judgment on the ground the Ordinance conflicted with the newly enacted provisions of RCW 47.42.107. In November 1977 summary judgment was granted in respondents' favor on the ground the Ordinance conflicted with the new statutory provision and that it was unconstitutional as applied to respondents. The City was enjoined from requiring removal of respondents' signs without compensation. The City appealed, and we reverse.

[1] We note at the outset that under the rule stated in Lange v. Woodway, 79 Wn.2d 45, 483 P.2d 116 (1971) respondents have no standing to maintain an action for declaratory and injunctive relief for they have failed to exhaust their administrative remedies and show conclusively that the ordinance they challenge will harm them. In Lange v. Woodway the court applied this well settled rule requiring exhaustion of administrative remedies to a challenge to a zoning ordinance. It held the failure to seek a variance was fatal to the action for a declaratory judgment:

> If such alleviation [a variance] is available, then one must seek it before he will be heard to say that the ordinance injuriously affects him. If one cannot show that enforcement of the challenged ordinance harmfully affects him, then he has no standing to challenge the constitutionality of that ordinance.

Lange v. Woodway, supra at 48.

Respondents contend this rule does not apply because constitutional issues are raised which cannot be disposed of by the administrative appeal process. It is true that a party may always raise the question of the constitutionality of an administrative action as a defense in a judicial proceeding to enforce the administrative rule, and in such

cases prior exhaustion of administrative remedies will not be required. Yakima County Clean Air Authority v. Glascam Builders, Inc., 85 Wn.2d 255, 257, 534 P.2d 33 (1975). See also United States v. Kissinger, 250 F.2d 940 (3d Cir.), cert. denied 356 U.S. 958, 2 L. Ed. 2d 1066, 78 S. Ct. 995 (1958). In such cases, of course, the party has no need to show it is harmed by administrative action because it is already a defendant in enforcement proceedings. Where a party affirmatively seeks declaratory or injunctive relief, however, it must show that its remedies have been exhausted in order to show it has standing to raise even a constitutional issue. As noted by the court in Lange v. Woodway:

> The fact that administrative variance procedures do not address themselves to the underlying constitutional validity of the ordinance in question has no bearing on the question of whether a party has standing to urge the unconstitutionality of the ordinance in the courts. The question is not whether the administrative procedure can respond to the charge of unconstitutionality, but whether the procedure can alleviate any harmful consequence of the ordinance to the complaining party.

Lange v. Woodway, supra at 48.

This distinction has also been noted and applied by the United States Supreme Court. In Public Util. Comm'n v. United States, 355 U.S. 534, 539-40, 2 L. Ed. 2d 470, 78 S. Ct. 446 (1958) the court noted:

> If . . . an administrative proceeding might leave no remnant of the constitutional question, the administrative remedy plainly should be pursued.

See also Aircraft & Diesel Equip. Corp. v. Hirsch, 331 U.S. 752, 772, 91 L. Ed. 1796, 67 S. Ct. 1493 (1947).

We recognize that where no administrative remedy is available, or where such remedy is patently inadequate, a party may be allowed to raise constitutional issues in a declaratory judgment proceeding without being required to exhaust administrative channels needlessly or to the party's injury. See Bare v. Gorton, 84 Wn.2d 380, 382, 526 P.2d 379 (1974). See also Aircraft & Diesel Equip. Corp. v. Hirsch, supra at 773. Respondents have not shown that such is the case here.

The Seattle Ordinance provides two forms of administrative relief. Section 4 of Ordinance No. 97205, amending section 3 of Ordinance No. 90138, defines those signs which shall be unlawful by such criteria as location, visibility, size, and type of business advertised. Pursuant to section 7 of Ordinance No. 97025, nonconforming signs must either be made to conform or removed within 3 years. As one form of administrative relief, this section provides for an extension of time for removal, at the discretion of the City's Board of Adjustment, for an additional period of up to 7 years. Such an extension would allow an even greater period of time over which the sign owner could recover his investment in the sign. It would not necessarily completely avoid the burden of terminating the sign, though, if the useful life of the sign structure would extend beyond the termination date under the Ordinance.

Section 6 of the Ordinance provides a second form of relief, however - a variance. Variances may be issued by the Board of Adjustment for signs falling within any of nine designated categories, where to do so would not violate the intent and purposes of the Ordinance. The section provides:

> Upon written application and payment of a filing fee of $50.00, the Board of Adjustment

> is authorized to issue sign variances in the following instances, but only when the issuance of such sign variance is within the intent and purposes of this ordinance and will not be contrary to the public interest, detrimental to the public welfare or safety, injurious to property in the vicinity, and will not make difficult the viewing and comprehending by motorists and pedestrians of official or conforming signs, or increase the density of signs along a designated landscaped and/or scenic view section to an extent tending to constitute a hazard to traffic safety or a detriment to the appearance of the neighborhood, or impinge upon a view of scenic interest . . .

If a sign falls within one of the designated categories, the Board may authorize a modification of the regulations created by the Ordinance. Such a modification, according to the definition of a variance found in section 2, would be a "less literal interpretation or strict application of the provisions and requirements" of the Ordinance. Under section 3B.2 of the Ordinance as amended the Board may attach such conditions to the variance as are deemed necessary in the public interest. Although the Ordinance is not explicit in this regard, the only reasonable interpretation of the variance provisions appears to be that a variance would allow an otherwise nonconforming sign to remain standing - presumably indefinitely - as long as the requirements of the variance provision are met. This remedy appears to provide a means by which a sign owner may completely avoid the requirement that a sign be removed.

Respondent Ackerley alleges it was not eligible for a variance under the terms of the Ordinance, but points to no facts in the record to support its allegation. In fact, the City has insisted

throughout the course of this litigation that respondents should first pursue their administrative remedies. The record discloses that neither Ackerley nor its predecessor in interest sought a variance. Neither Ackerley nor respondent Maronco has made any showing that the administrative remedy of a variance is either unavailable or inadequate. Furthermore, while respondent Diamond was refused a 7-year extension of its amortization period, and was granted instead a 3-year extension, it did not appeal from the Board's adverse ruling. Diamond has not shown it sought a variance, which could have "alleviate[d] any harmful consequence of the ordinance." Lange v. Woodway, supra at 48. We conclude, then, that respondents are barred from maintaining a declaratory judgment action by the failure to pursue the administrative remedy available to them--a variance--which could have obviated any injury to them under the Ordinance.

Respondents can raise the substantive issues presented in a defense to any enforcement action by the City, civil or criminal. That such action will be taken is very evident. Prior to the entry of the appealed summary judgment enjoining enforcement, the City had taken substantial steps to enforce its Ordinance. Such steps include the institution of a criminal proceeding against respondent for refusing to abide by the Ordinance. The summary judgment ordered the criminal proceeding dismissed, apparently accepting the substantive principles advanced by respondents on this appeal. It may safely be presumed that upon the reversal of the summary judgment, the City conformable to its prior actions and under its continuing duty to enforce the appealed ordinance will continue its enforcement efforts both under the civil and criminal laws.

[2] Should this court leave the substantive issues undetermined, the City will be confronted by respondents' same arguments for determination with resulting additional delays and expense which can

now be obviated. The disposition of the issues next made, which provides additional reasons for reversal and dismissal of the summary judgment, is not merely advisory. Even if a litigant is itself barred from declaratory and injunctive relief, the court may still grant declaratory relief where the "real merits of the controversy are unsettled and the continuing question of great public importance exists." Sorenson v. Bellingham, 80 Wn.2d 547, 558, 496 P.2d 512 (1972). See 1 W. Anderson, Actions for Declaratory Judgments, at 126 et seq. (2d ed. 1951), citing State ex rel. Yakima Amusement Co. v. Yakima County, 192 Wash. 179, 73 P.2d 759 (1939).

As pointed out in Diversified Indus. Dev. Corp. v. Ripley, 82 Wn.2d 811, 815, 514 P.2d 137 (1973), the other elements being present, it is enough if the controversy concerns "the mature seeds" of any actual, present and existing dispute, "as distinguished from a possible dormant, hypothetical, speculative, or moot disagreement". DeFunis v. Odegaard, 84 Wn.2d 617, 628, 529 P.2d 438 (1974) also points out "We will retain an appeal and decide issues, even though moot, if they present matters of substantial public interest, particularly where final determination of the issue is essential in guiding the conduct of public officials". This court is more likely to decide the issues raised "where it is adequately briefed and argued, and where it appears that an opinion of the court would be beneficial to the public and to the other branches of the government, the court may exercise its discretion and render a delcaratory judgment to resolve a question of constitutional interpretation." State ex rel. Distilled Spirits Inst., Inc. v. Kinnear, 80 Wn.2d 175, 178, 492 P.2d 1012 (1972). No party suggests the public interest will be harmed by our deciding the substantial issues presented and fully argued and the parties do not ask that we refuse to resolve the issues so raised and determined by the appealed 9-page summary judgment.

I. STATUTORY ISSUES

Respondents contend that both federal and state laws require that compensation be paid for the removal of their signs. We do not agree, for the basic reasons stated below, namely, that respondents' signs are outside the scope of the Federal Highway Beautification Act and RCW 47.42.102, and that RCW 47.42.107 may not constitutionally be applied in this case.

In order to place this question in its proper perspective, we must briefly summarize the relevant provisions of state and federal law. In 1958 the United States Congress initiated a national program involving voluntary participation by the states to regulate outdoor advertising signs within 660 feet of interstate highways in areas outside of commercial and industrial zones. Pub. L. No. 85-767, ch. 1, § 131, 72 Stat. 904 (August 27, 1958). The State of Washington responded with an enactment of the Highway Advertising Control Act of 1961, Laws of 1961, ch. 96, p. 1575, amended by Laws of 1963, 1st Ex. Sess., ch. 3, p. 1287. The state act designated certain "protected" and "scenic" areas within 660 feet of interstate and state highways, respectively, and established criteria for advertising signs in those areas. Neither the state nor the federal act required that compensation be made to owners of those signs required to be removed under this coordinated plan. The state Highway Advertising Control Act and administrative regulations promulgated thereunder were the subject of a constitutional challenge in Markham Advertising Co. v. State, 73 Wn.2d 405, 439 P.2d 248 (1968) and were upheld by this court.

In 1965 the Congress amended its program with the Highway Beautification Act, Pub. L. No. 89-285, § 101, 79 Stat. 1028 (Oct. 22, 1965). Its provisions require each state to maintain "effective control" of outdoor signs within 660 feet of, and visible from, the interstate and primary highway

systems as a condition of the state's receiving its full federal-aid highway funds apportionment. The penalty for failure to make provisions for "effective control" is the loss of 10 percent of the state's allotted funds. 23 U.S.C. § 131(b), (c).

The act defines "effective control" for signs outside of urban areas. 23 U.S.C. § 131(c). Signs within commercial or industrial zones, however, are to be regulated under an agreement between the state and the Secretary of Transportation. 23 U.S.C. § 131(d). Just compensation is required to be paid for the removal of any signs under the act, the federal government paying 75 percent of the cost. 23 U.S.C. § 131(g). Finally, the federal act specifies that states may impose stricter limitations on signs along the federal highway systems than those established under the federal law. 23 U.S.C. § 131(k).

In order to implement the federal program in this state the legislature amended the Highway Advertising Control Act with the Scenic Vistas Act of 1971. Laws of 1971, 1st Ex. Sess., ch. 62. In accordance with the federal approach, the removal provisions of the state statute do not apply to signs within commercial or industrial zones as long as they conform to customary uses as defined by the statute. RCW 47.42.062. The Act also provides for compensation to owners of signs removed pursuant to its terms. RCW 47.42.102. Finally, the statute affirmatively recognizes the right of counties, cities and towns to enact more restrictive outdoor sign regulations. RCW 47.42.048, .070.

Also in 1971, the State of Washington entered into an agreement with the Secretary of Transportation governing regulation under the federal program of outdoor signs within commercial and industrial zones. The agreement applies only to signs erected after June 1, 1971. It thus places no restrictions on respondents' signs, which were erected prior to that date. The agreement also specifically acknowledges that stricter requirements may be imposed

than those established under its terms. Clause IV, Agreement: For Carrying out National Policy, etc., signed October 20, 1971, by the Director of Highways of the Washington State Highway Commission and the Federal Highway Administrator of the United States Department of Transportation.

[3] We note first that the federal act (in 23 U.S.C. § 131(k), the state statute (in RCW 47.42.048 and .070), and the intergovernmental agreement (in Clause IV) all recognize and acknowledge the right of lesser governmental entities to enact regulations governing outdoor signs which are stricter than those imposed by the federal and state acts. Thus it is clear that the state and federal enactments have not preempted the field of regulation of outdoor advertising.

We also note that the compensation requirements of the federal and state statutes discussed thus far only apply to signs which fall within the scope of those statutes. RCW 47.42.102 by its own terms restricts compensation to those signs removed pursuant to the provisions of RCW 47.42. It is not disputed that respondents' signs are not subject to that statute. Respondents contend, however, that the federal statute is broader, requiring compensation for any outdoor sign required to be removed for any reason. We do not agree.

[4] Prior to a 1978 amendment, the language of 23 U.S.C. § 131(g) required compensation "upon the removal of any outdoor advertising sign, display, or device lawfully erected under State law" as a condition to the State's receiving its full highway fund allotment. Since signs within commercial and industrial zones which are not governed by an agreement between the State and the Department of Transportation are not regulated by, and are wholly outside the scope of, the federal statute, the only reasonable interpretation of the statutory language is that it does not require compensation for such signs. Accord, Metromedia, Inc. v. San Diego, ___ Cal. 3d ___, 592 P.2d 728, 154 Cal. Rptr.

212 (1979); Modjeska Sign Studios, Inc. v. Berle, 43 N.Y.2d 468, N.E.2d 255, 402 N.Y.S.2d 359 (1977), appeal dismissed, ___ U.S. ___, 58 L. Ed. 2d 101, 39 S. Ct. 66 (1978). As noted by the Supreme Court of California in Metromedia, Inc. v. San Diego, supra, the legislative history of the statute fully supports this interpretation. Furthermore, the statute was amended in 1978 to clarify the broad language of subsection (g), requiring just compensation for removal of signs, etc. "not permitted under subsection (c) [effective control in nonurban areas] of this section." The legislative history of this amendment, a part of the Surface Transportation Assistance Act of 1978, makes it clear that it is intended to clarify existing law and, contrary to respondent Ackerley's contention, requires compensation only for signs which do not meet the "effective control" requirements of the federal act. H.R. Rep. No. 95-1485, 85th Cong., 2d Sess., reprinted in [1978] U.S. Code Cong. & Ad. News 7295, 7310.[1] We conclude, then, that the federal

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[1]Respondent Ackerley has submitted copies of Department of Transportation memoranda regarding the proper construction of the 1978 amendments to 23 U.S.C. § 131(g) and (k). A memorandum from the Federal Highway Administrator to certain Regional Federal Highway Administrators dated March 6, 1978, states that "all lawfully erected signs still in existence on November 6, 1978, and those additional signs which were removed prior to November 6, 1978, but were the subject of litigation pending on that date are entitled to compensation under 23 U.S.C. 131(g) and (k)." This statement must be read in the context of subsection (g) as amended, which limits the scope of the compensation requirement to signs "not permitted under subsection (c) of this section." Since the signs in question here are not within the scope of subsection (c) either directly

Highway Beautification Act does not require compensation for those outdoor signs not within the scope of its provisions for effective control. Since respondents' signs are indisputably in commercial and industrial areas of the city, which are not within the effective control provision of the act, and having been erected prior to 1971, are not covered by the agreement between the State of Washington and the Department of Transportation, it is clear that none of the provisions of the federal act, including the compensation requirement, apply to respondents' signs.

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or through the agreement between the Department of Transportation and the State of Washington we can only conclude the compensation provision of subsection (g) is not applicable here. Subsection (k) recognizes the right of a state to impose stricter limitations on outdoor advertising on federal aid highway systems, and requires compensation if signs within the scope of subsection (g) are terminated under such state regulations. There is nothing in the statutory language, however, to suggest that signs not within the scope of the federal program are included in the compensation requirement.

This interpretation is supported by a memorandum from the Department of Transportation's Chief Counsel to the Highway Administrator, dated March 5, 1979. This memo corrects an earlier interpretation of the 1978 amendments. It does not take issue with the previous interpretation that the compensation requirement applies to those signs which fall within the scope of subsection (c). It is rather concerned with the language of the previous interpretation stating that compensation is required for signs "legally in existence" on the effective date of the amendments. The correct interpretation of the statute, the memo points out,

In 1977, while the consolidated actions below were pending, the legislature enacted a more sweeping compensation provision, RCW 47.42.107. Laws of 1977, 1st Ex. Sess., ch. 141, § 1. Under the provisions of this statute:

> (1) Just compensation shall be paid upon the removal of any existing sign pursuant to the provisions of any resolution or ordinance of any county, city, or town of the state of Washington by such county, city, or town if:
>
> (a) Such sign was lawfully in existence on May 10, 1971 (the effective date of the Scenic Vistas Act of 1971).
>
> . . .

On the basis of this statute respondents moved for summary judgment in September 1977, more than 2 years after they had received notification that their signs were subject to immediate removal. The trial court granted respondents' motion, finding that the statute required that compensation be paid to respondents, and that the City Ordinance therefore conflicted with state law.

[5,6] We agree with the City, however, that the interpretation of the statute applied by the trial court is too broad. In holding the statute's

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is that compensation must be made for signs lawfully erected under state law in existence, or the subject of pending litigation, on the effective date of the amendment. In the context of the statutory language and the preexisting interpretation that only signs within the scope of subsection (c) are involved--an interpretation with which the memo does not appear to take issue--the memorandum reinforces our view that removal of signs not within the scope of the federal program does not require compensation under 23 U.S.C. § 131(g) and (k).

provisions applicable to signs already subject to immediate removal by the City, in the exercise of its police power and without compensation, the interpretation runs afoul of article 8, section 5 of the state constitution which prohibits the state or any municipality from giving a gift of public funds.

Article 8, section 5 prohibits the state or any subdivision thereof from making a gratuitous expenditure of public funds to any corporation or individual, even if the expenditure is made to achieve a laudable public purpose. State ex rel. O'Connell v. Port of Seattle, 65 Wn.2d 801, 399 P.2d 623 (1965); State Highway Comm'n v. Pacific Northwest Bell Tel. Co., 59 Wn.2d 216, 367 P.2d 605 (1961). A gratuitous expenditure is one for which the public entity neither expects nor receives consideration. Scott Paper Co. v. Anacortes, 90 Wn.2d 19, 578 P.2d 1292 (1978); Washington Natural Gas Co. v. PUD 1, 77 Wn.2d 94, 459 P.2d 633 (1969). Such would be the case here if the provisions of RCW 47.42.107 were to be applied to respondents.

Of key importance in this regard is the fact that, at the time RCW 47.42.107 was enacted respondents' signs had already been subject to immediate removal without compensation under the City's exercise of its police power for more than 2 years. Only the fact that respondents had initiated litigation and postponed final determination of the matter for more than 2 years kept the signs in existence as late as 1977, when the legislation was passed. The City had by that time taken all steps necessary to terminate the signs, and had a right to do so without compensating the owners. The legislature could not then give new life to the signs and require compensation for their removal without requiring the City to make a gratuitous expenditure of public funds. The provision for retroactive application to signs in existence on May 10, 1971, is thus ineffective as to those

signs already subject to removal on the effective date of the act. We conclude that the statute's requirement for compensation upon the removal of "existing" signs can only apply to those signs which are in existence, and which were not subject to immediate removal without compensation on the effective date of RCW 47.42.107.[2]

II. CONSTITUTIONAL ISSUES

Respondents' original complaints alleged the Ordinance denied them equal protection of the laws by failing to provide compensation for the removal of their signs while owners of other signs removed pursuant to other laws were compensated. Respondents Ackerley and Maronco's second amended complaint also alleged the Ordinance deprived them of their First Amendment right of free speech, and that it was not a reasonable exercise of the police power and therefore effected an unconstitutional taking of property without compensation. The order of summary judgment below found the Ordinance to be in conflict with RCW 47.42.107 and declined to reach the other constitutional issues raised. Those issues were before the court, however, by virtue of respondents' complaints, and were fully

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[2]Respondent Ackerley's argument that the City has no standing to raise the question of the constitutionality of the trial court's interpretation of RCW 47.42.107 is misplaced. A municipality may challenge a statute on the ground it exceeds the authority of the legislature under the state constitution. Kirkland v. Steen, 68 Wn.2d 804, 806, 416 P.2d 80 (1966). Furthermore, the City is a defendant in this action and need not show standing in order to argue a legal theory which is applicable to the case.

briefed for this court. We would therefore be remiss if we did not point out that each of the constitutional questions raised by respondents below has been fully considered and laid to rest by this court's prior opinion.

[7] In Markham Advertising Co. v. State, 73 Wn.2d 405, 426, 439 P.2d 248 (1968), appeal dismissed, 393 U.S. 316, 21 L. Ed. 2d 512, 89 S. Ct. 553, rehearing denied, 393 U.S. 1112, 21 L. Ed. 2d 813, 89 S. Ct. 854 (1969), this court unequivocally held that "the regulation of outdoor advertising is a reasonable and proper exercise of the police power." We cited many opinions from other courts which are in accord with that rule, and can now add to that list two recent decisions. Metromedia, Inc. v. San Diego, supra; Suffolk Outdoor Advertising Co. v. Hulse, 43 N.Y.2d 483, 489, 373 N.E.2d 263, 402 N.Y.S.2d 368 (1977), appeal dismissed, ___ U.S. ___, 58 L. Ed. 2d 101, 99 S. Ct. 66 (1978). The ordinance in question here specifically recites that its intent and purpose is to "protect the public health, safety, welfare, convenience and the enjoyment of public travel . . . and to conserve natural and man-made beauty" by regulating outdoor signs in designated areas of the city. The court approved precisely these objectives as legitimate objectives for the exercise of the police power in Markham Advertising at page 422. Although respondents contend that public safety is not in fact an objective of the Ordinance, and that the sole objective of the Ordinance is to promote aesthetic values, they point to no evidence to support their claim, which directly contradicts the language of the Ordinance itself. We find this case indistinguishable from Markahm Advertising with regard to the question of the proper exercise of the police power. We therefore conclude that the Ordinance was a legitimate exercise of the police power and thus does not effect an unconstitutional taking of property without compensation. See also Modjeska Sign Studios, Inc. v. Berle, supra.

[8] Respondents next contend the Ordinance denies them equal protection of the laws because owners of signs removed pursuant to federal and state statutes are compensated, while respondents' signs are subject to removal without compensation. The Ordinance does not make any distinction which is either arbitrary or invidious. See Markham Advertising, supra at 427-28. It is a valid exercise of the City's police power to terminate certain land uses which it deems adverse to the public health and welfare within a reasonable amortization period. Under this Ordinance respondents' signs became illegal uses of the land and were subject to removal. The fact that the state and federal governments have chosen to regulate by different means certain other signs, in other areas of the state or erected at a later date than respondents' signs, does not reflect on the validity of the City's action. Respondents have not been denied equal protection of the laws. See Metromedia, Inc. v. San Diego, supra. See also State v. Yard Birds, Inc., 9 Wn. App. 514, 513 P.2d 1030 (1973).

[9] Finally, respondents contend the Ordinance denies them freedom of speech under the First Amendment. In State v. Lotze, 92 Wn.2d 52, 593 P.2d 81 (1979) this court held that the traffic safety purpose of outdoor sign regulation, which we approved in Markham Advertising and which is also present here, is sufficiently compelling to sustain reasonable restrictions on outdoor advertising, even when the speech affected is political. The restrictions of RCW 47.42 which were upheld in Lotze are not different in any material respect from the placement and size restrictions imposed by the Ordinance here on respondents' purely commercial speech. Like the statutory scheme approved in Lotze, the Ordinance "represents a reasonable place and manner limitation on speech leaving ample alternative channels of communication." State

v. Lotze, supra at 60. We conclude the Ordinance does not violate respondents' First Amendment rights.[3]

The order of the trial court is reversed and the case is dismissed.

UTTER, C.J. and DOLLIVER, HICKS, and WILLIAMS, JJ., concur.

WRIGHT, J. (concurring in part)--The majority correctly determined that respondents are barred from maintaining a declaratory judgment action by reason of having failed to pursue available administrative remedies. That determination is sufficient and any further discussion, therefore, unnecessary.

BRACHTENBACH, J. (concurring in part; dissenting in part)--I concur in part and dissent in part.

I agree with the majority that the respondents are barred from maintaining a declaratory judgment action by having failed first to pursue their administrative remedies. That should end the matter.

However, the majority steps forward and gratuitously renders an extensive advisory opinion

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[3]We do not reach the question of the constitutionality of RCW 47.42.107 as applied to other signs which are not within the scope of the federal program, but which are required to be removed by local ordinance after the effective date of the statute. This issue was raised by amici curiae but was not briefed or argued by the parties. It is therefore not appropriate for this court to reach the issue. State v. Smith, 88 Wn.2d 639, 645 n.1, 564 P.2d 1154 (1977); Long v. Odell, 60 Wn.2d 151, 154, 372 P.2d 548 (1962).

interpreting state and federal statutes. Further it decides constitutional issues involving equal protection, police power and First Amendment rights. The only basis for this voluntary excursion into issues potentially present in a lawsuit not even before us is the majority's conclusion that it presumes that the City will continue its enforcement efforts and the respondents could raise these issues as a defense to such enforcement action by the City. Thus the majority deals with anticipated questions in a suit which is not even in existence.

We have held since the enactment of the Uniform Declaratory Judgments Act, RCW 7.24, that there must exist an actual dispute between the parties as distinguished from a possible or potential dispute. Washington Beauty College, Inc. v. Huse, 195 Wash. 160, 80 P.2d 403 (1938); DeGrief v. Seattle, 50 Wn.2d 1, 14, 297 P.2d 940)1956). "The act may not be used for the purpose of obtaining purely advisory opinions." Seattle-First Nat'l Bank v. Crosby, 42 Wn.2d 234, 245, 254 P.2d 732 (1953).

This principle has been declared to be a sound rule of law. 1 W. Anderson, Actions for Declaratory Judgments § 65, at 130 (2d ed. 1951). I agree with the Michigan Supreme Court that a declaratory judgment statute does not constitute the court as "a fountain of legal advice." Flint v. Consumers Power Co., 290 Mich. 305, 309, 287 N.W. 475 (1939).

The majority in effect admits that it is anticipating defenses which respondents could raise to any enforcement action by the City. To anticipate is to consider in advance, to cause to occur prematurely, to deal with in advance, to fulfill beforehand, or to write in a way conditioned by knowledge or expectation of what will be treated later. Webster's Third New International Dictionary 94 (1971).

I disagree with some of the conclusions of the majority's advisory opinion, but will not extend

this dissent therewith since I view the majority's pronouncements as not binding on anyone, including these parties.

ROSELLINI and STAFFORD, JJ., concur with BRACHTENBACH, J.

IN THE
SUPREME COURT OF THE STATE OF WASHINGTON

ACKERLEY COMMUNICATIONS, INC., ET AL, Respondents, v. THE CITY OF SEATTLE, ET AL, Appellants. DIAMOND PARKING, INC., Respondent, v. THE CITY OF SEATTLE, ET AL, Appellants.	MANDATE No. 45281 KING County No. 786238 800825

The State of Washington to: The Superior Court of the State of Washington

in and for KING County

This is to certify that the opinion of the Supreme Court of the State of Washington filed on November 21, 1979, became the decision terminating review of this court in the above entitled case on February 14, 1980. This cause is mandated to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule of Appellate Procedure 14.3, costs are taxed as follows: $264.00 in favor of appellants and against respondents.

An order Denying Motion for Reconsideration was entered February 14, 1980; copy attached.

cc:
Mr. Douglas N. Jewett
City Attorney
Mr. Scott Nielson, Asst.
Attorney General
Lycette, Diamond & Sylvester
Mr. Lyle Iversen
Bogle & Gates
Mr. Ronald Schaps
Mr. Dale Ramerman
Mr. Lee Kraft
City Attorney
Roberts, Shefelman,
Lawrence, Gay & Moch
Mr. George M. Mack
Reporter of Decisions

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 14th day of February, A.D. 1980

[seal]

s/
JOHN J. CHAMPAGNE
Clerk of the Supreme Court,
State of Washington

THE SUPREME COURT OF WASHINGTON

ACKERLEY COMMUNICATIONS, INC., ET AL,
Respondents,
v.
THE CITY OF SEATTLE, ET AL,
Appellants.
DIAMOND PARKING, INC.,
Respondent,
v.
THE CITY OF SEATTLE, ET AL,
Appellants.

No. 45281

ORDER DENYING MOTION FOR RECONSIDERATION

The Court having unanimously decided that the respondent's motion for reconsideration should be denied.

It is ordered that the motion be and it hereby is denied.

Dated this 14th day of February, 1980.

s/
Chief Justice

92 Wn.2d 905

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

ACKERLEY COMMUNICATIONS, INC., and MARONCO, INC., corporations, Plaintiffs, vs. THE CITY OF SEATTLE, et al., Defendants.	CONSOLIDATED CASES 786 238 800 825
DIAMOND PARKING, INC., Plaintiff, vs. CITY OF SEATTLE, Defendant.	JUDGMENT FOR MANDATE OF SUPREME COURT

These consolidated cases having come on regularly before this Court for entry of Judgment in accordance with the mandate and opinion herein, of the Supreme Court of the State of Washington in Ackerly Communication Inc. et al., Respondents, v. The City of Seattle, et al., Appellants, and Diamond Parking, Inc., Respondent, v. The City of Seattle, et al., Appellants, Washington Supreme Court No. 45281; this Court having reviewed said mandate and opinion of the Supreme Court of the State of Washington and the other records and files herein; and being fully advised in the premises; Now, Therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The Summary Judgment entered in these consolidated cases by this Court on November 30,

1977 is hereby vacated and set aside in its entirety and any injunctions contained therein are hereby permanently dissolved.

2. Plaintiff's complaints herein including but not limited to the Second Amended Complaint of Plaintiff Ackerley and Maronco for Declaratory Judgment and Injunction in King County Cause No. 786238, and the Amended Complaint for Declaratory Judgment and Injunction of Diamond Parking, Inc. in King County Cause No. 800825 are hereby dismissed with prejudice.

3. Defendant The City of Seattle is awarded its statutory costs and disbursements herein to be taxed against plaintiffs Ackerley Communications, Inc. and Maronco, Inc., In King County Superior Court Cause No. 786238.

4. Defendant The City of Seattle is awarded its statutory costs and disbursements herein to be taxed against plaintiff Diamond Parking, Inc. in King County Superior Court Cause No. 800825.

5. Plaintiff Ackerley Communications, Inc. is ordered to remove ~~without compensation~~ and within ~~thirty~~ NINETY days of the date of this Judgment all of the billboards identified in Paragraph V of the Second Amended Complaint of Plaintiffs Ackerley and Maronco for Declaratory Judgment and Injunction ~~that are still standing and all other billboards owned or maintained by Ackerley Communications, Inc. within the City of Seattle that became subject to termination under Ordinance 90138 as amended prior to the effective date of Chapter 141, Laws of the State of Washington, 1977, 1st Ex. Sess.~~ WR WR

6. Diamond Parking, Inc. is hereby ordered to remove ~~without compensation~~ and within thirty days of the date of this Judgment its two outdoor WR

advertising signs at 1417-8th Avenue, Seattle, and its oil and gas station sign bearing the word "TEXACO" at 1105 Western Avenue, Seattle.

DONE IN OPEN COURT this 7 day of ~~February~~ APRIL, 1980.

s/
JUDGE

Presented by:

CHARLES D. BROWN
Of Counsel for Defendant
The City of Seattle

[COPY RECEIVED
Sep. 13, 1977
Lycette, Diamond
& Sylvester]

[Affidavit of
Service - Stamp]

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

ACKERLEY COMMUNICATIONS, INC., and MARONCO, INC., corporations, Plaintiffs, vs. THE CITY OF SEATTLE, et al., Defendants.	CONSOLIDATED CAUSES 786238 800825 MOTION FOR SUMMARY JUDGMENT
DIAMOND PARKING, INC., Plaintiff, vs. CITY OF SEATTLE, Defendant.	[DOCKETED] [RECEIVED Sept. 13, 1977 - Stamp]

The plaintiff, Ackerly Communications, Inc. ("Ackerley") moves that the Court grant summary judgment in its favor that Seattle City Ordinance 97025 is invalid insofar as it requires the removal of outdoor advertising signs without the payment of just compensation, because it is in contravention of Chapter 141 (1977 1st extraordinary session) of the laws of Washington. By this motion, Ackerley addresses only the limited question of the invalidity of Ordinance 97025 in the face of Chapter 141, and expressly reserves all other questions

raised by the pleadings in this matter. This motion is based on the Affidavit of William E. Barber filed herewith, the Second Supplemental Affidavit of Charles D. Brown which was filed with the court on July 20, 1976, the Memorandum of Authorities filed herewith, and all other pleadings and records on file in this matter.

Respectfully submitted this 13th day of September, 1977.

BOGLE & GATES

s/
Robert W. Graham
Ronald T. Schaps
Dale B. Ramerman
Elaine L. Spencer
Attorneys for Ackerley Communications, Inc., and Maronco, Inc.

[RECEIVED
Nov. 16, 1977
Lycette, Diamond
& Sylvester]

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

ACKERLEY COMMUNICATIONS, INC., and MARONCO, INC., corporations, Plaintiffs, vs. THE CITY OF SEATTLE, et al., Defendants.	CONSOLIDATED CASES 786 238 800 825 SUMMARY JUDGMENT
DIAMOND PARKING, INC., Plaintiff, vs. CITY OF SEATTLE, Defendant.	

THIS MATTER coming on regularly before the Court on the motions of the plaintiffs for summary judgment in these causes based upon Chapter 141, Laws of the State of Washington, 1977 1st ex. sess., and the Court having examined the affidavits, pleadings, records and files herein, including:

1. "Complaint for Declaratory Judgment and Injunction" (Document 1, filed September 30, 1974, File No. 786238)

2. "Motion for Order to Show Cause" (Document 2, Cause No. 786238, filed September 30, 1974)
3. "Order to Show Cause" (Document 3, File No. 786238, filed on September 30, 1974)
4. Defendant City of Seattle's Notice of Appearance and Alfred Petty's Notice of Appearance (Document 4, Cause No. 786238, filed October 4, 1974)
5. "Stipulation and Order" substituting party plaintiffs (Document 7, File No. 786238, filed February 10, 1975)
6. "Amended Complaint for Declaratory Judgment and Injunction" (Document 8, File No. 786238, filed April 16, 1975)
7. "Answer of Defendants" (Document 9, filed September 23, 1975, File No. 786238)
8. "Note for Trial Docket" (Document 11, filed April 28, 1976, File No. 786238)
9. "Motion for Consolidation and for Substitution of Party" (Document 12, filed May 26, 1976, File No. 786238)
10. "Affidavit in Support of Motion For Consolidation" (Document 14, filed May 27, 1976, File No. 786238)
11. "Order of Consolidation and Substitution of Party" (Document 15, filed June 2, 1976, File No. 768238)
12. "Complaint for Declaratory Judgment and Injunction" (Document 1, filed August 25, 1975, File No. 800825)
13. "Plaintiff's Memorandum in Support of Motion for Temporary Injunction" (Document 4, filed October 3, 1975, File No. 800825)
14. "Answer of Defendants" (Document 5, filed March 25, 1976, File No. 800825)
15. "Motion for Summary Judgment" (Document 7, filed May 14, 1976, File No. 800825)
16. "Affidavit of Jason Alexander in Support of Motion for Summary Judgment" (Document 9, filed May 17, 1976, File No. 800825)

17. "Defendants' Memorandum of Points and Authorities in Support of Motion for Summary Judgment" (Document 6, filed May 14, 1976, File No. 800825)
18. "Motion for Consolidation" (Document 10, filed May 26, 1976, File No. 800825)
19. "Affidavit of Joel Diamond in Opposition to Motion for Summary Judgment" (Document 12, filed June 14, 1976, File No. 800825)
20. "Plaintiffs" Memorandum in Opposition to Motion for Summary Judgment" (Document 13, filed June 15, 1976, File No. 800825)
21. Request for Production Directed to Defendant City of Seattle (Document 20, filed June 22, 1976, File No. 786238)
22. "Motion to Amend Complaint" (Document 14, filed July 1, 1976, File No. 800825)
23. "Order" (Document 17, filed July 9, 1976, File No. 800825)
24. "Response to Plaintiff Ackerley's Request for Production" (Document 23, filed July 13, 1976, File No. 786238)
25. "Amended Complaint for Declaratory Judgment and Injunction" (Document 16, filed July 9, 1976, File No. 800825)
26. "Supplemental Affidavit of Charles D. Brown in Support of Motion for Summary Judgment" (Document 18, filed July 15, 1976, File No. 800825)
27. "Defendants' Supplemental Memorandum in Support of Summary Judgment" (Document 19, filed July 15, 1976, File No. 800825)
28. "Stipulated Order Granting Permission to the State of Washington to Intervene" (Document 20, filed August 20, 1976, File No. 800825)
29. "Motion for Leave to Amend Complaint and for Continuance of Hearing" (Document 16, filed June 14, 1976, File No. 786238)
30. "Concurrence with Motion to Continue Hearing" (Document 18, filed June 18, 1976, File No. 786238)

31. "Order" continuing hearing on summary judgment and permitting amended complaint (Document 19, filed June 21, 1976, File No. 786238)
32. "Second Amended Complaint of Plaintiffs Ackerley and Maronco for Declaratory Judgment and Injunction" (Document 21, filed June 22, 1976, File No. 786238)
33. "Memorandum of Ackerley Communications, Inc. in Opposition to the City's Motion for Summary Judgment Against Plaintiff" (Document 24, filed July 19, 1976, File No. 786238)
34. "Colorado Trial Court Decision in Combined Communications Corporation v. City and County of Denver" (Document 25, filed July 19, 1976, File No. 786238)
35. "Second Supplemental Affidavit of Charles D. Brown" (Document 26, filed July 20, 1976, File No. 786238)
36. "Notice of Trial Amendment" (Document 32, filed August 12, 1976, File No. 786238)
37. "Memorandum of Law" (Document 33, filed August 20, 1976, File No. 786238)
38. "Amended Memorandum of Law" (Document 35, filed August 26, 1976, File No. 786238)
39. "Court's Memorandum Opinion Denying Defendants' Motion for Summary Judgment" (Document 21, filed October 4, 1976, File No. 800825)
40. "Motion for Reconsideration" (Document 36, filed September 1, 1976, File No. 786238)
41. "Memorandum of Defendant City of Seattle in Support of Motion to Reconsider" (Document 38, filed October 1, 1976, File No. 786238)
42. "Order Denying Summary Judgment" (Document 39, filed October 4, 1976, File No. 786238)

43. "Answer to Amended Complaint for Declaratory Judgment and Injunction" (Document 41, filed October 18, 1976, File No. 786238)
44. "Answer to Second Amended Complaint" (Document 42, filed October 18, 1976, File No. 786238)
45. "Defendants First Interrogatories to Plaintiff Diamond Parking, Inc., and Requests for Admissions and Answers Thereto" (Document 47, filed December 7, 1976, File No. 786238)
46. "Plaintiff Ackerley(s First Interrogatories to City of Seattle and Answers Thereto" (Document 48, filed March 1, 1977, File No. 786238)
47. "Order of Continuance" (Document 49, filed April 27, 1977, File No. 786238)
48. Motion of Diamond Parking, Inc. for Continuance (Document 50, filed July 11, 1977, File No. 786238)
49. "Order of Continuance" (Document 53, filed August 1, 1977, File No. 786238)
50. "Defendant City's Supplemental Answers to Plaintiff Ackerley's First Interrogatories" (Document 54, filed July 19, 1977, File No. 786238)
51. "Defendants' First Interrogatories and Requests for Admissions to Plaintiffs Ackerley Communications, Inc. and Maronco, Inc." (Document 65, filed July 26, 1977, File No. 786238)
52. "Affidavit in Support of Motion for Order to Compel City to Answer Interrogatories" (Document 61, filed July 26, 1977,. File No. 786238)
53. "Motion for Order to Compel City to Answer Interrogatories" (Document 62, filed July 26, 1977, File No. 786238)

54. "Motion for Temporary Restraining Order and Order to Show Cause" (Document 68, filed August 22, 1977, File No. 786238)
55. "Affidavit of Dale B. Ramerman" (Document 67, filed August 22, 1977, File No. 786238)
56. "Motion for Summary Judgment" (Document 73, filed September 13, 1977, File No. 786238)
57. "Motion of Diamond Parking, Inc. for Summary Judgment" (Document 76, filed September 15, 1977, File No. 786238)
58. "Affidavit of William A. Barber" (Document 71, filed September 13, 1977, File No. 786238)
59. "Memorandum of Authorities in Support of Plaintiffs' Motion for Summary Judgment" (Document 72, filed September 13, 1977, File No. 786238)
60. "Memorandum of Diamond Parking in Support of Motion for Summary Judgment" (Document 75, filed September 15, 1977, File No. 786238)
61. "Order on Motion for Temporary Restraining Order and Order to Show Cause" (Document 78, filed September 15, 1977, File No. 786238)
62. "Supplemental Response to Plaintiffs' Interrogatories" (Document 79, filed September 21, 1977, File No. 786238)
63. "Affidavit of Gunnar Larsen" (Document 80, filed September 22, 1977, File No. 786238)
64. "Memorandum of City of Seattle Opposing Motions for Summary Judgment" (Document 81, filed September 22, 1977, File No. 786238)
65. "Reply to the City's Memorandum Opposing Summary Judgment" (Document 82, filed September 23, 1977, File No. 786238)

hearing argument of counsel on September 28, 1977, and being fully advised in the premises, and it appearing that there is no genuine issue of any material fact as to the application and effect of Chapter 141, Laws of the State of Washington, 1977 ex. sess., and the plaintiffs herein are entitled to judgment as a matter of law, now, therefore,

IT IS HEREBY ORDERED, ADJUDGED, DECLARED AND DECREED that:

1. Chapter 141, Laws of the State of Washington, 1977 1st ex. sess., is a general law which limits the police power of counties, cities and towns, including the police powers of the defendant City of Seattle;

2. Chapter 141, Laws of the State of Washington, 1977 1st ex. sess., is clear and unambiguous;

3. Chapter 141, Laws of the State of Washington, 1977 1st ex. sess., prohibits the defendant City of Seattle from, directly or indirectly, requiring or forcing the removal of any existing sign, as the term "sign" is defined in RCW 47.42.020(8), without the payment of just compensation if that sign was either (a) lawfully in existence on May 10, 1971, or (b) was erected subsequent to May 10, 1971, in compliance with existing state and local law;

4. Chapter 141, Laws of the State of Washington, 1977 1st ex. sess., is clarifying legislation; and

5. The effect and application of Chapter 141, Laws of the State of Washington, 1977 1st ex. sess., under the circumstances of these cases, are the same whether calrifying or new legislation.

IT IS FURTHER ORDERED, ADJUDGED, DECLARED AND DECREED that Chapter 141, Laws of the State of Washington, 1977 1st ex. sess., does not compel the defendant City of Seattle to make a gift in violation of Art. 8, § 7 of the Constitution of the State of Washington and said Chapter 141 is constitutional.

IT IS FURTHER ORDERED, ADJUDGED, DECLARED AND DECREED that City of Seattle Ordinance No. 97025, as amended, to the extent it purports to directly or indirectly require the removal without compensation of signs, for which Chapter 141, Laws of the State of Washington, 1977 ex. sess., requires the payment of just compensation as a condition of removal, is in conflict with general state law and is therefore to that extent invalid and unconstitutional.

IT IS FURTHER ORDERED, ADJUDGED, DECLARED AND DECREED that Section 4.1 of City of Seattle Ordinance 90138, as amended by Section 7 of City of Seattle Ordinance 97025, in its entirety and Section 4.3 of City of Seattle Ordinance 90138, as amended by Section 7 of City of Seattle Ordinance 97025, to the extent said Section 4.3 applies to nonconforming signs, is invalid, unconstitutional and null and void.

IT IS FURTHER ORDERED, ADJUDGED, DECLARED AND DECREED that each of the signs involved in these cases, which are as listed below: is a "sign" within the meaning of RCW 47.42.020(8) and Chapter 141, Laws of the State of Washington, 1977 1st ex. sess.; is in existence at this time; and was lawfully in existence on May 10, 1971.

A. Plaintiff Ackerley Communications, Inc.'s outdoor advertising signs located adjacent to the Alaskan Way Viaduct at the following locations in Seattle:

1. 1503 Western Avenue
2. 216 Alaskan Way South
3. 1200 Western
4. 64 Marion
5. 86 Battery
6. 617 Western
7. 90 South Dearborn
8. 88 Battery
9. 1605 Western Avenue
10. 1315 Western Avenue

B. Plaintiff Diamond Parking, Inc.'s two outdoor advertising signs adjacent to Interstate Highway 5 and located at 1417 - 8th Avenue, Seattle, and its oil and gas station sign bearing the word "Texaco" adjacent to the Alaskan Way Viaduct and located at 1105 Western Avenue, Seattle.

IT IS FURTHER ORDERED, ADJUDGED, DECLARED AND DECREED that the plaintiffs, and each of them, have standing to bring their respective actions.

IT IS FURTHER ORDERED, ADJUDGED, DECLARED AND DECREED that neither plaintiff Ackerley Communications, Inc. nor Maronco, Inc. has any adequate administrative remedy.

IT IS FURTHER ORDERED, ADJUDGED, DECLARED AND DECREED that plaintiff Diamond Parking, Inc. does not have any adequate administrative remedy.

IT IS FURTHER ORDERED, ADJUDGED, DECLARED AND DECREED that, in any event, no alleged failure to exhaust administrative remedies by any plaintiff could bar the relief herein granted to that plaintiff, and that the doctrine of exhaustion of administrative remedies has no application to the issues and circumstances of these cases.

IT IS FURTHER ORDERED, ADJUDGED, DECLARED AND DECREED that the City of Seattle is hereby permanently enjoined from requiring or forcing, or seeking to require or force, directly or indirectly, the removal of the plaintiffs' signs involved in these cases without payment of just compensation.

IT IS FURTHER ORDERED, ADJUDGED, DECLARED AND DECREED that the defendant City of Seattle is hereby directed to dismiss immediately, with prejudice, all pending criminal charges against the plaintiffs, their officers, agents, directors and employees, based upon the plaintiffs' maintenance of, or failure to remove, any signs which are the subject matter of these cases.

IT IS FURTHER ORDERED, ADJUDGED, DECLARED AND DECREED that since this Summary Judgment fully determines the City of Seattle's inability to

compel the removal of the signs involved in these cases under Ordinance 97025, as amended, this Court need not, and does not, reach or determine the other constitutional and statutory issues tendered in these cases, without prejudice to any party's position on such further issues should the City of Seattle elect in the future to pass an ordinance requiring the removal of any signs upon the payment of just compensation.

IT IS FURTHER ORDERED, ADJUDGED, DECLARED AND DECREED that plaintiffs are entitled to judgment for their taxable costs incurred herein.

DONE this 3rd day of November, 1977.

s/ W.R. Cole
JUDGE

Presented by:

BOGLE & GATES

s/
Ronald T. Schaps
Attorneys for plaintiffs
Ackerley Communications, Inc.,
and Maronco, Inc.

LYCETTE, DIAMOND & SYLVESTER

s/
Lyle L. Iversen
Attorneys for plaintiff
Diamond Parking, Inc.

Copy Received and Notice of
Presentation Waived:

JOHN P. HARRIS, Corporation Counsel

Charles D. Brown
Assistant Corporation Counsel
Attorneys for defendants,
City of Seattle and Alfred Petty

SLADE GORDON, Attorney General

Scott Nielson
Assistant Attorney General
Attorneys for intervenor,
State of Washington

[COPY RECEIVED
May 1, 1980
Lycette, Diamond
& Sylvester]

NO. 45281

THE SUPREME COURT

OF THE STATE OF WASHINGTON

ACKERLEY COMMUNICATIONS, INC.
and MARONCO, INC.

Appellants,

v.

CITY OF SEATTLE and ALFRED PETTY,

Respondents.

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that Ackerley Communications, Inc., and Maronco, Inc., the above-named appellants, hereby appeal to the Supreme Court of the United States from the final decision of the Supreme Court of the State of Washington, reversing the granting of a summary judgment, entered in this action on November 21, 1979, reconsideration having been denied February 14, 1980.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

Dated: May 1, 1980.

Respectfully submitted,

BOGLE & GATES

s/
Robert W. Graham

s/
Peter M. Anderson

s/
Ronald T. Schaps

Attorneys for Appellants,
Ackerley Communications,
Inc. and Maronco, Inc.

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
Washington, D.C. 20590

In Reply Refer to:
BCC-40

Mr. Eric M. Rubin
Wolf, Block, Schorr & Solis-Cohen
Eleventh Floor Connecticut Building
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Rubin:

This is in response to your letter of December 14 regarding a decision by the Supreme Court of Washington in Ackerley Communications, Inc. v. City of Seattle (No. 45281, November 21, 1979). You ask for an expeditious response because a petition of reconsideration is apparently pending before the court.

We have not been able to review the pleadings and factual background of this case and we have no specific knowledge of the precise nature of the signs at issue. Furthermore, since this matter is still under litigation, we will not comment on the merits of the case and will limit the answers to an explanation to the applicable Federal statute.

The Highway Beautification Act of 1965 as amended, 23 U.S.C. 131, defines the areas in which signs must be controlled. The areas subject to control include:

(1) Areas within 660 feet of the right-of-way of Interstate and Federal-aid primary highways.

(2) Areas outside of urban areas and beyond 660 feet of the right-of-way of Interstate and Federal-aid primary highways.

Signs within 660 feet (group 1) must be controlled if they are "visible" from main traveled way of such highways. Signs beyond 660 feet of the right-if-way of such highways and outside of urban areas (group 2) must be controlled if they are visible and erected with the purpose of their message being read from the main traveled way of the highway. thus, within 660 feet of the right-of-way of such highways signs must be controlled whether or not they are in urban areas. Signs in urban areas beyond 660 feet of the right-of-way are not reached by the Act.

This reading of the Act is clearly supported by the legislative history of P.L. 93-643, which extended the control provisions of the Act to areas beyond 660 feet of the right-of-way. A copy of that Public Law and the House, Senate, and Conference Reports are enclosed for your information. We call your attention to section 109 of the Public Law, and pages 20-21 of the Conference Report, page 4 of the House Report, and page 13 of the Senate Report. Urban areas are defined in 23 U.S.C. § 101(a).

It should be noted further that only signs adjacent to Interstate and Federal-aid primary highways must be controlled under Federal law. These highway systems are defined in 23 U.S.C. § 103(e) and (b), respectively. Signs along highways not on either of these two systems or signs located beyond 660 feet of the rights-of-way of highways on these systems, if in urban areas, are not reached by the Act and are not subject to any of the Act's provisions.

There is a clear difference between 23 U.S.C. § 131'c), the definition of effective control, and 23

U.S.C. § 131(d), relating to signs in commercial and industrial areas. Section 131(c) exempts certain classes of signs from the effective control provisions of the Act. In some cases, such as directional and official signs, regulatory provisions are required which impose controls. Other signs, such as "on property" or "for sale or lease" signs, are wholly uncontrolled by the Act (it should be noted that the 1958 "Bonus" law results in certain controls on these signs because Washington participates in the voluntary bonus program, 23 U.S.C. § 131(j).

Signs in commercial and industrial areas are not exempted from control under section 131(c), but are treated separately in section 131(d). The underlying controls of § 131(c) continue to apply to signs permitted by section § 131(d). See South Dakota v. Volpe, 353 F. Supp. 335 (D.S.D., 1973).

Signs within commercial and industrial areas are not required by Federal law to be removed if they conform to an agreement each State has with the Secretary regarding the size, lighting, and space of signs in the areas. This agreement also defines what is to be an "unzoned" commercial or industrial area. Section 131(d) allows local size, lighting, and spacing standards to govern in certain circumstances. Failure to have agreement does not result in no controls, but results in no special exemption for signs in commercial or industrial areas.

Washington's agreement provides for size, lighting, and spacing of newly erected signs, and allows signs existing on the date of the agreement in commercial and industrial areas to remain, even if they do not conform to these standards. The agreement did not exclude the pre-1971 signs in commercial and industrial areas, but merely recognized that it would be counter-productive to apply

the new standards to them. Pre-1971 signs are treated as "grandfathered" signs. See 23 CFR §§ 750.706 and 750.707(c).

In 1978, the Congress amended the just compensation provisions of the Act, requiring that legally erected signs which do not conform to § 131(c) must be paid for upon removal. See § 122(a) and (b) of P.L. 95-599, November 6, 1978, copy enclosed. The legislative history of the 1978 Amendment indicates that the Congress sought to eliminate amortization as a means of removing signs in areas subject to the controls of the Act. This compensation requirement clearly extends to removals of signs in commercial and industrial areas, since these signs are "not permitted by § 131(c)." This is made even more clear because the Senate initially sought to limit the extent of the 1978 Amendments by not requiring compensation upon removal in commercial and industrial areas (see S. Rept. 95-833, p. 14-15, copy enclosed). This approach was rejected by the Conference Committee in favor of the broader version eventually adopted (see the Conference Report (H. Rept. 95-1797), copy enclosed).

The specific reference to § 131(c) in both the amendments to §§ 131(g) and 131(h) is deliberate. While compensation is not required for signs "conforming to", i.e., specifically permitted by, § 131(c)(1)-§ 131(c)(5), compensation is clearly required for sign permitted under § 131(d).

Our initial interpretation of the 1978 amendments was that property rights extinguished by operation of law prior to the effective date of the 1978 amendments were not within the ambit 23 U.S.C. § 131(g) as amended. However, further review of the legislative history, coupled with very clear expressions of concern by the drafters of the 1978 Amendment in the Congress, indicated that extinguishment of property rights through amortization

could not be used to remove signs not permitted by § 131(c), lawfully erected in areas subject to effective control under 23 U.S.C. § 131.

We noted this in our memorandum of March 5 and March 6, 1979. Of course, States may continue to reasonably regulate outdoor advertising. A sign violating reasonable regulations may be terminated by operation of law. We have dealth with the continuing authority of States and localities to regulate billboards in a series of questions and answers regarding the 1978 Amendments. These are enclosed for your information.

Under the Highway Beautification Act, 23 U.S.C. §131(g), the payment of just compensation is part of effective control. Failure to provide compensation in accordance with § 131(g), as discussed in this letter, exposes a State to sanctions under § 131(b). See State of Vermont v. Brinegar, 379 F. Supp. 606 (D. Vt., 1973).

We trust this answers your questions. We have provided copies of this letter to the State of Washington, the city of Seattle, and the parties to the lawsuit which is the subject of this letter.

Sincerely yours,

s/
Edward V.A. Kussy
Deputy Assistant Chief Counsel
Right-of-Way and Environmental Law

Enclosures
cc:
Thomas Garlington - Chief Counsel
Ronald Schaps - Attorney for Ackerley Communications, Inc.
Charles Brown - Assistant City Attorney - Seattle, Washington

FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abriding the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law shich shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

23 U.S.C. § 131

§ 131. Control of outdoor advertising.

(a) The Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

(b) Federal-aid highway funds apportioned on or after January 1, 1968 to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system

of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

(c) Effective control means that after January 1, 1968, such signs, displays, and devices shall, pursuant to this section, be limited to (1) directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning the lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, and (3) signs, displays, and devices advertising activities conducted on the property on which they are located.

(d) In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting and spacing, consistent with customary use is to be determined by agreement between the several States and the Secretary, may be erected and maintained within six hundred and sixty

feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and primary systems which are zoned industrial or commercial under authority of State law, or in unzoned commercial or industrial areas as may be determined by agreement between the several States and the Secretary. The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act. Nothing in this subsection shall apply to signs, displays, and devices referred to in clauses (2) and (3) of subsection (c) of this section.

* * *

(g) Just compensation shall be paid upon the removal of the following outdoor advertising signs, displays, and devices.

(1) those lawfully in existence on the date of enactment of this subsection,

(2) those lawfully on any highway made a part of the interstate or primary system on or after the date of enactment of this subsection and before January 1, 1968, and

(3) those lawfully erected on or after January 1, 1968.

The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:

(A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(B) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

* * *

(j) Any State highway department which has, under this section as in effect on June 30, 1965,

entered into an agreement with the Secretary to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System shall be entitled to receive the bonus payments as set forth in the agreement, but no such State highway department shall be entitled to such payments unless the State maintains the control required under such agreement or the control required by this section, whichever control is stricter. Such payments shall be paid only from appropriations made to carry out this section. The provisions of this subsection shall not be construed to exempt any State from controlling outdoor advertising as otherwise provided in this section.

(k) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section.

1975 Amendment to 23 U.S.C. § 131(g)

"(g) Just compensation shall be paid upon the removal of any outdoor advertising sign, display, or device lawfully erected under state law. The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:

(A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(B) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon."

1978 Amendment to 23 U.S.C. § 131(c), (g), and (k)

"(c) Effective control means that such signs, displays, or devices after January 1, 1968, if

located within six hundred and sixty feet of the right-of-way and, on or after July 1, 1975, or after the expiration of the next regular session of the State legislature, whichever is later, if located beyond six hundred and sixty feet of the right-of-way, located outside of urban areas, visible from the main traveled way of the system, and erected with the purpose of their message being read from such main traveled way, shall, pursuant to this section, be limited to (1) directional and official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, display, and devices advertising the sale or lease of property upon which they are located, (3) signs, displays, and devices advertising activites conducted on the property on which they are located, (4) signs lawfully in existence on October 22, 1965, determined by the state, subject to the approval of the secretary, to be landmark signs, including signs on farm structures or natural surfaces, of historic or artisitic significance the preservation of which would be consistent with the purposes of this section, and (5) signs, displays, and devices advertising the distribution of nonprofit organizations of free coffee to individuals traveling on the Interstate System or the primary system. For the purposes of this subsection, the term 'free coffee' shall include coffee for which a donation may be made, but is not required."

* * *

"(g) Just compensation shall be paid upon the removal of any outdoor advertising sign, display,

or device lawfully erected under state law and not permitted under subsection (c) of this section, whether or not removed pursuant to or because of this section. The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:

(A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(B) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon."

* * *

"(k) Subject to compliance with subsection (g) of this section for the payment of just compensation, nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section."

HIGHWAY ADVERTISING CONTROL ACT - SCENIC VISTAS ACT

R.C.W. 47.42.010 Declaration of purpose. The control of signs in areas adjacent to state highways of this state is hereby declared to be necessary to promote the public health, safety, welfare, convenience and enjoyment of public travel, to protect the public investment in the interstate system and other state highways, and to attract visitors to this state by conserving the natural beauty of areas adjacent to the interstate system, and of scenic areas adjacent to state highways upon which they travel in great numbers, and to insure that information in the specific interest of the traveling public is presented safely and effectively. [1961 c 96 § 1.]

* * *

R.C.W. 47.42.030 Signs visible from interstate, primary, or scenic systems prohibited except as permitted by chapter. Except as permitted under this chapter, no person shall erect or maintain a sign which is visible from the main traveled way of the interstate system, the primary system, or the scenic system. In case a highway or a section of highway is both a part of the primary system and the scenic system, only those signs permitted along the scenic system shall be erected or maintained. [1971 ex.s. c 62 § 3; 1961 c 96 §3.]

* * *

R.C.W. 47.42.102 Compensation for removal of signs -- Authorized -- Signs to which applicable.

(1) Except as otherwise provided in subsection (3) of this section, just compensation shall be paid upon the removal of any sign (pursuant to the provisions of chapter 47.42 RCW), lawfully erected under state law, which is visible from the main traveled way of the interstate system or the primary system.

(2) Such compensation shall be paid for the following:

(a) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(b) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

(3) In no event, however, shall compensation be paid for the taking or removal of signs adjacent to the interstate system and the scenic system which became subject to removal pursuant to chapter 96, Laws of 1961 as amended by section 55, chapter 3, Laws of 1963 ex. sess. prior to May 10, 1971. [1975 1st ex.s. c 271 § 2; 1971 ex.s. c 62 §12.]

* * *

R.C.W. 47.42.107 Compensation for removal of signs pursuant to local government authority.

(1) Just compensation shall be paid upon the removal of any existing sign pursuant to the provisions of any resolution or ordinance of any county, city, or town of the state of Washington by such county, city, or town if:

(a) Such sign was lawfully in existence on May 10, 1971 (the effective date of the Scenic Vistas Act of 1971); or

(b) Such sign was erected subsequent to May 10, 1971 (the effective date of the Scenic Vistas Act of 1971), in compliance with existing state and local law.

(2) Such compensation shall be paid in the same manner as specified in RCW 47.42.102 (2) for the following:

(a) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(b) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon. [1977 ex.s. c 141 § 1.]

RCW 47.42.110 Agreements to secure federal aid. The commission is authorized to enter into agreements (and such supplementary agreements as may be necessary) consistent with this chapter, with the secretary of commerce or the secretary of transportation authorized under section 131(b) of title 23, United States Code, as codified and enacted by Public Law 85-767 and amended only by section 106, Public Law 86-342, in order that the state may become eligible for increased federal aid as provided for in section 131 of title 23, United States Code, as codified and enacted by Public Law 85-767 and amended only by section 106, Public Law 86-342. [1971 ex.s. c 62 § 16; 1961 c 96 § 11]

Seattle City Ordinance 97025
* * *

Section 1. (Intent and Purposes). It is declared to be the purpose of this ordinance to implement the purpose and policy expressed by the Highway Advertising Control Act of the State of Washington in the regulation of outdoor advertising signs adjacent to certain public highways, and this ordinance is hereby declared to be an exercise of the police power of the City of Seattle to protect the public health, safety, welfare, convenience and the enjoyment of public travel, to attract visitors to this city and to conserve natural and man-made beauty by regulating the size and location of certain signs adjacent to certain designated freeways, expressways, parkways and scenic routes within the City of Seattle, and this ordinance shall be liberally construed for the accomplishment of these purposes and is intended to be additional and supplemental to existing zoning and other laws regulating the size and location of signs.
* * *

Section 2. (Definitions).
* * *

NONCONFORMING SIGNS. A lawfully erected sign in existence on the effective date of this ordinance or at the time of any amendments hereto, and which thereafter would be prohibited by the provisions of this ordinance.
* * *

Section 2-A.

[This section describes the various highways and routes through the city where signs are prohibited by the ordinance. This section has been greatly expanded while this case has been pending to include virtually all areas along interstate and

federal-aid primary highways. The actual descriptions are not material here, because all parties have conceded throughout this case that the subject signs are located in commercial and industrial areas within 660 feet of, and visible from, interstate or federal-aid primary highways.]

* * *

Section 7. That Section 4 of Ordinance 90138, as amended by Ordinance 94586, be further amended to read as follows:

Section 4. (Nonconforming, Dilapidated and Abandoned Signs).

4.1 All conforming signs shall either be made to conform with the provisions of this ordinance or be removed within three (3) years of the date such signs mecame or become nonconforming, and it shall be unlawful for the owner or lessee of such sign or the owner or operator of the premises upon which such sign is located to fail to remove such sign after said period of time has expired. . . .

see 79

1972